

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL SAMUEL JOHNSON,
Plaintiff,
v.
WARDEN FONG, et al.,
Defendants.

Case No.: 11-02058 CW (PR)

ORDER DIRECTING PLAINTIFF TO FILE
NON-PRISONER IN FORMA PAUPERIS
APPLICATION, DISMISSING COMPLAINT
WITH LEAVE TO AMEND, AND DENYING
MOTIONS FOR APPOINTMENT OF COUNSEL

(Docket nos. 47, 51)

INTRODUCTION

The Court granted Plaintiff, who at the time he filed the present complaint was a state prisoner proceeding pro se, leave to proceed in forma pauperis (IFP) in this civil rights action.¹ Upon review of the allegations in the complaint, the Court dismissed the complaint without prejudice and without leave to amend for the following reasons: (1) Plaintiff's request for the restoration of credits forfeited as the result of an alleged unlawful disciplinary hearing is moot because he ultimately was not assessed any credit loss; (2) even if not moot, such request is not cognizable in a civil rights action and must be brought in a petition for a writ of habeas corpus; (3) Heck v. Humphrey, 512 U.S. 477 (1994), bars Plaintiff's damages claim based on the alleged unconstitutional deprivation of time credits because such claim necessarily calls into question the lawfulness of the duration of Plaintiff's sentence; (4) Plaintiff's claim for

¹ Plaintiff no longer is incarcerated.

1 injunctive relief to remedy his alleged unlawful conditions of
2 confinement at San Quentin State Prison (SQSP) is moot, because
3 Plaintiff no longer is incarcerated there; (5) the allegations in
4 the complaint, together with the documents attached thereto, show
5 that Plaintiff did not exhaust administrative remedies with
6 respect to his claim concerning unlawful conditions of confinement
7 at SQSP. See Docket no. 35.

8 On appeal, the United States Court of Appeals for the Ninth
9 Circuit affirmed this Court's order of dismissal with respect to
10 all claims except Plaintiff's damages claim concerning unlawful
11 conditions of confinement at SQSP. Docket no. 52. Specifically,
12 the Ninth Circuit held that claim should not have been dismissed
13 because it was not clear from the complaint and attachments
14 thereto that the claim is unexhausted. Consequently, the case was
15 remanded "for further proceedings consistent with this
16 disposition." Id. at 2.

17 DISCUSSION

18 I. Plaintiff's IFP Status

19 Plaintiff filed the present pro se civil rights action and an
20 application seeking leave to proceed IFP when he was incarcerated
21 at the California State Prison - Solano. The Court granted
22 Plaintiff IFP status, but later revoked that status when Plaintiff
23 sought leave to proceed IFP on appeal. Docket nos. 34, 43.

24 Ordinarily, a plaintiff is permitted to file a civil action
25 in federal court without prepayment of fees or security if he
26 alleges in an affidavit that he is unable to pay such fees or give
27 security therefor. See 28 U.S.C. § 1915(a). But, if the
28 plaintiff is a prisoner who alleges that he is unable to pay the

1 full filing fee at the time of filing, he will be required to pay
2 the full amount of the filing fee even if he is granted IFP
3 status. See 28 U.S.C. § 1915(b)(1). This is done by way of an
4 "installment plan," whereby the court will assess an initial
5 payment, and the prisoner will be required thereafter to make
6 monthly payments of twenty percent of the preceding month's income
7 credited to his prison trust account. See id.

8 If a prisoner is released, however, the court will be unable
9 to collect the funds from his prisoner trust account as required
10 under 28 U.S.C. § 1915(b). Consequently, because Plaintiff has
11 been released from custody, he now must apply to proceed IFP under
12 the general provisions of 28 U.S.C. § 1915(a)(1), as set forth in
13 the Conclusion of this Order.

14 II. Plaintiff's Conditions of Confinement Claim

15 Plaintiff's complaint, including attachments, is ninety-two
16 pages long. It includes allegations concerning the claims that
17 are no longer part of this action as well as Plaintiff's one
18 remaining claim alleging unlawful conditions of confinement at
19 SQSP. With respect to the latter, which is the only claim that
20 remains at issue in this case, the allegations are lengthy and
21 vague. See Docket no. 1.

22 Rule 8(a) of the Federal Rules of Civil Procedure requires
23 that the complaint set forth a "short and plain statement of the
24 claim showing that the pleader is entitled to relief." A
25 complaint that fails to state the specific acts of the defendant
26 that violated the plaintiff's rights fails to meet the notice
27 requirements of Rule 8(a). See Hutchinson v. United States, 677
28 F.2d 1322, 1328 n.5 (9th Cir. 1982). Additionally, Rule 8(e)
requires that each averment of a pleading be "simple, concise, and

1 direct." See McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996)
2 (affirming dismissal of complaint that was "argumentative, prolix,
3 replete with redundancy, and largely irrelevant"). While the
4 federal rules require brevity in pleading, a complaint
5 nevertheless must be sufficient to give the defendants "fair
6 notice" of the claim and the "grounds upon which it rests."
7 Erickson v. Pardus, 551 U.S. 89, 93 (2007) (quotation and citation
8 omitted).

9 Here, Plaintiff's claim for damages based on unlawful
10 conditions of confinement at SQSP cannot proceed as plead because
11 he has not clearly and concisely set forth his claim against any
12 Defendant and has failed to provide information sufficiently
13 simple, concise and direct for the Court to determine whether the
14 allegations state a cognizable claim for relief. Accordingly, the
15 complaint is DISMISSED for failure to state a claim upon which
16 relief may be granted. Plaintiff may file an amended complaint
17 that addresses only his claim of unlawful conditions of
18 confinement at SQSP and cures the noted pleading deficiencies by
19 alleging facts (1) that are sufficient for the Court to determine
20 whether he states a claim for the violation of his constitutional
21 rights, (2) that link each Defendant to the injury for which that
22 Defendant is alleged to be responsible, and (3) that specify and
23 link the relief he seeks to a particular Defendant or Defendants.²

24 ² Plaintiff is informed that the Court will not consider in
25 this action any claim other than the noted claim concerning
26 unlawful conditions of confinement at SQSP. Further, while
27 Plaintiff is not required to plead the exhaustion of
28 administrative remedies in his amended complaint, he is informed
that if the claim has not been exhausted it will be subject to
dismissal.

1 C. Motions for the Appointment of Counsel

2 Plaintiff's motions for the appointment of counsel are DENIED
3 as premature. The Court will not consider any motion for the
4 appointment of counsel unless and until the complaint is ordered
5 served.

6 CONCLUSION

7 For the foregoing reasons, the Court orders as follows:

8 1. No later than fourteen days from the date of this Order,
9 Plaintiff either shall (1) pay the \$350.00 filing fee in this
10 action, or (2) file a completed non-prisoner IFP application.

11 If Plaintiff fails to timely pay the filing fee or file a
12 completed non-prisoner IFP application, the case will be dismissed
13 without prejudice and will be closed.

14 2. The complaint is DISMISSED with leave to amend.

15 Plaintiff shall file an amended complaint no later than
16 fourteen days from the date of this Order. He shall use the
17 court's civil rights complaint form, a copy of which is provided
18 herewith, and include in the caption both the case number of this
19 action, No. C 11-2058 CW (PR), and the heading, "AMENDED
20 COMPLAINT."

21 If Plaintiff fails to timely file an amended complaint in
22 conformity with this Order, the case will be dismissed without
23 prejudice and will be closed.

24 3. Plaintiff's motions for the appointment of counsel are
25 DENIED.

26 4. It is Plaintiff's responsibility to prosecute this case.
27 Plaintiff must keep the Court informed of any change of address
28 and must comply with the Court's orders in a timely fashion.

1 Failure to do so may result in the dismissal of this action,
2 pursuant to Federal Rule of Civil Procedure 41(b), for failure to
3 prosecute.

4 5. The Clerk of the Court shall update the docket to
5 reflect Plaintiff's current address in Rohnert Park, and shall
6 send Plaintiff a non-prisoner IFP application and a civil rights
7 complaint form.

8 This Order terminates Docket nos. 47 and 51.

9 IT IS SO ORDERED.

10 Dated: 12/17/2012



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE